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January 17, 2019

Hon. Danny K. Chun
Kings County Supreme Court
Part 19
320 Jay Street
Brooklyn, New York 11201

Re: People v. Eddie Martins & Richard Hall
Indictment No. 7467/2017

Dear Justice Chun:

We respectfully request that the Court accept this letter in lieu of a more formal response to the defendants' motion for the disqualification of the Kings County District Attorney's Office and the appointment of a special prosecutor to handle this case pursuant to County Law § 701. While we disagree with the rationale for the defendants' motion, we are requesting, for different reasons, that the Court appoint a special prosecutor in this case.

When disqualification of a district attorney is sought by a defendant, there generally must be a showing of either (1) actual prejudice to the defendant arising from a demonstrated conflict of interest; or (2) a substantial risk of an abuse of confidence. *Working Families Party v. Fisher*, 23 N.Y.3d 539, 546 (2014); *Schumer v. Holtzman*, 60 N.Y.2d 46, 55 (1983). The "substantial risk of an abuse of confidence" refers to the "opportunity for abuse of confidences entrusted to an attorney." *People v. Adams*, 20 N.Y.3d 608, 612 (2013) (citations, internal quotation marks, and brackets omitted). In general, the defendant "should demonstrate actual prejudice or so substantial a risk thereof as could not be ignored." *Schumer*, 60 N.Y.2d at 55. "In rare situations," even when the defense has not demonstrated actual prejudice or a substantial risk thereof, courts may disqualify a district attorney upon the mere appearance of impropriety "when the appearance is such as to discourage public confidence in our government and the system of law to which it is dedicated." *Adams*, 20 N.Y.3d at 612 (citation, internal quotation marks, and brackets omitted).

The standard is different when the district attorney seeks disqualification. In such cases, where there is a legitimate doubt as to whether a district attorney and his office may handle a case, the district attorney may resolve that doubt by choosing to step aside. *Working Families Party*, 23 N.Y.3d at 546. A district attorney seeking to disqualify himself "may do so upon a good faith application containing the reasonable grounds for his belief that he is so disqualified." *Id.* at 546 (citation and internal quotation marks omitted).

The defendants have not demonstrated actual prejudice. In fact, there has been no actual prejudice to the defendants. Given the current state of the case, however, we are gravely concerned that there is now a substantial risk of an appearance of impropriety, and that this case

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may, in fact, be one of the rare cases where an appearance of impropriety, by itself, warrants the appointment of a special prosecutor. Consequently, the District Attorney's Office is requesting that the Court appoint a special prosecutor in this case.

We do not agree with some of the claims and arguments set forth in the defendants' moving papers,¹ but we do acknowledge that the landscape of the case has changed dramatically in the last several weeks. There are mainly three areas of concern we feel we must raise. Each standing alone may not warrant the appointment of a special prosecutor, but we fear that the combination of these three circumstances presents a grave risk of undermining the public's confidence in the administration of justice, both in our Office and in Kings County.

First, early in the case, our Office became aware that an ADA employed by the Office was involved in a romantic relationship with defendant Hall and had telephone contact with him after his arrest. The ADA was a line ADA who had no supervision, influence, or control over this case, and she was walled off from the case, but the complainant in this case ("AP") was troubled by this connection and cited it, among other reasons, in her public demand for a special prosecutor. At that time, we assured AP that we would carefully, ethically and zealously prosecute this case, and she withdrew her demand for a special prosecutor.

Second, over the course of the case, the People have become aware that AP has made a series of false, misleading and inconsistent statements about the facts of this case and about collateral or unrelated matters. Most troubling, she made some false statements under oath. And she made some false, misleading or inconsistent statements as recently as this month. We have had to confront AP many times about these statements. These difficult conversations with her, and her distress over the Office's obligation to disclose these statements to the defense, have contributed to AP's mistrust in the prosecution team. Several weeks before the anticipated trial date of January 22, 2019, the People reached out to the Court and requested that the Court appoint an attorney for AP who could advise her about her potential criminal exposure regarding her false sworn statements. The Court did assign counsel, but AP's hostility towards our Office continues, and she has expressed it to the press and through social media. On January 16, 2018, she again made a public demand for a special prosecutor to be appointed in this case.

Third, our current assessment of the case is that, due to AP's false, misleading and inconsistent statements, Rule 3.8 of the Rules of Professional Conduct and other legal requirements prohibit us from calling her to testify under oath, and we may not be able to proceed in an ethical fashion on some counts now contained in the indictment. If we decide to drop certain counts against the defendants, this decision will surely be perceived by AP, and we now fear by the public, as evidence that we are, in fact, unfairly disfavoring AP and favoring the defendants because of our damaged relationship with AP, because of AP's public criticisms of our Office, and/or because of the prior relationship between defendant Hall and an employee of our Office.

¹ For example, the claim that we would hesitate to make required *Giglio* disclosures related to AP out of fear that she would retaliate with criticisms against our Office is both offensive and belied by the fact that we have made numerous disclosures about AP, despite her criticism of our Office. Furthermore, we have not violated Rule 3.3(a)(3) of the Rules of Professional Conduct.

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The evidence shows that on the evening of September 15, 2017, in Calvert Vaux Park, former police officers Martins and Hall arrested AP. When they let her go less than half an hour later, defendant Martins's semen was in AP's vagina and defendant Hall's semen was in her mouth. Based on this and other evidence, this Office has been committed to prosecuting the defendants for serious crimes against AP and the public.² We regret that our continuing to pursue the case might well create an appearance of impropriety and discourage public confidence in our Office and the Kings County criminal justice system. In the end, we want to see justice done on AP's behalf, and we want to maintain community trust in the criminal justice system. For AP's interests, the public's interests, and the interests of justice, we believe that the appointment of a special prosecutor is appropriate in this case.

Respectfully submitted,



Nancy Hopcock
Chief Assistant District Attorney

cc: Marc A. Bederow, Esq.
Daniel L. Bibb, Esq.
Peter Guadagnino, Esq.

² As Your Honor is aware, the shocking facts of this case rightfully prompted legislative action, and under the current law as recently amended, these circumstances would constitute the victim's *per se* lack of consent to the indicted sexual conduct. See Penal Law § 130.05(3)(j).